No. 14-31037

IN THE

United States Court of Appeals for the Fifth Circuit

JONATHAN P. ROBICHEAUX, et al., *Plaintiffs-Appellants*,

v.

JAMES D. CALDWELL, in his official capacity as the Louisiana Attorney General, also known as Buddy Caldwell, *Defendant-Appellee*.

JONATHAN P. ROBICHEAUX, et al., *Plaintiffs-Appellants*,

v.

DEVIN GEORGE, in his official capacity as the State Registrar and Center Director at Louisiana Department of Health and Hospitals; TIM BARFIELD, in his official capacity as the Louisiana Secretary of Revenue; KATHY KLIEBERT, in her official capacity as the Louisiana Secretary of Health and Hospitals, *Defendants-Appellees.*

FORUM FOR EQUALITY LOUISIANA, et al., *Plaintiffs-Appellants*,

v.

TIM BARFIELD, in his official capacity as the Louisiana Secretary of Revenue; DEVIN GEORGE, in his official capacity as the State Registrar, *Defendants-Appellees.*

On Appeal from the United States District Court for the Eastern District of Louisiana, Case Nos. 2:13-cv-5090, 2:14-cv-97, 2:14-cv-327
The Honorable Martin Leach-Cross Feldman, District Judge

BRIEF *AMICI CURIAE* OF THE CATO INSTITUTE AND CONSTITUTIONAL ACCOUNTABILITY CENTER IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

Elizabeth B. Wydra*
Douglas T. Kendall
Judith E. Schaeffer
David H. Gans
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th St., NW, Ste. 501
Washington, DC 20036
(202) 296-6889
elizabeth@theusconstitution.org
**Counsel of Record*

Ilya Shapiro
CATO INSTITUTE
1000 Massachusetts Ave., NW
Washington, DC 20001
(202) 842-0200

Counsel for Amici Curiae

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

No. 14-31037, *Robicheaux et al. v. Caldwell.*

Pursuant to Local Rules 29.2 and 28.2.1, the undersigned counsel of record for *amici* certifies that the parties' list of persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case, and that list is complete, to the best of undersigned counsel's knowledge. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Amici further state that neither organization is a publicly-held corporation, nor do they issue stock or have parent corporations. *Amici* are non-profit 501(c)(3) organizations.

Dated: October 24, 2014

Respectfully submitted,

/s Elizabeth B. Wydra
Counsel of Record for *Amici Curiae* CAC & Cato Institute

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INTEREST OF THE *AMICI CURIAE*[1]

Amicus Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars and the public to improve understanding of the Constitution and to preserve the rights, freedoms, and structural safeguards that our nation's charter guarantees.

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[1] *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to the brief's preparation or submission. Counsel for all parties have consented to the filing of this brief.

Amici's interest in this case lies in enforcing the age-old principle of "equality under the law" as enshrined in the Constitution through the Fifth and Fourteenth Amendments. We have filed joint briefs in numerous cases, including *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); and *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014).

INTRODUCTION AND SUMMARY OF ARGUMENT

Dismissing the Supreme Court's interpretation of the constitutional guarantee of equal protection in *United States v. Windsor*, 133 S. Ct. 2675 (2013), and rejecting the analysis of every other federal court to apply *Windsor* in the context of state marriage regulations, the court below held that Louisiana was free to deny loving, committed same-sex couples the freedom to marry because the state "has a legitimate interest . . . for addressing the meaning of marriage through the democratic process." Op. at 1.[2] The district court's circular

[2] The district court relied on different reasoning in rejecting plaintiffs' argument that Louisiana's ban on same-sex marriage offends the substantive liberty guarantees of the Fourteenth Amendment. Op. at 22 (concluding that "[t]here is

reasoning turns the Constitution on its head, empowering the people of the states to use the democratic process to oppress disfavored minorities. That cannot be squared either with the essential meaning of the constitutional guarantee of equal protection of the laws or principles of constitutional supremacy going back to the Founding.

Our Constitution requires states to respect fundamental constitutional principles, curtailing the power of majorities to use the democratic process to violate personal, individual rights. The Fourteenth Amendment protects individual rights against state infringement and outlaws state-sponsored discrimination against all persons, thereby preventing legislative or popular majorities in the states from oppressing disfavored individuals. As history shows, "a primary purpose of the Constitution is to protect minorities from oppression by majorities." *Latta v. Otter*, Nos. 14-35420, 14-35421, 12-17668, 2014 WL 4977682, at *9 (9th Cir. Oct. 7, 2014). As our Constitution provides, "[m]inorities trampled on by the democratic process have recourse to the courts; the recourse is called constitutional

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simply no fundamental right, historically or traditionally, to same-sex marriage"). In this brief, *amici* focus on the errors in the district court's equal protection analysis, demonstrating that the district court's analysis misreads the equal protection guarantee and cannot be squared with principles of constitutional supremacy going back to the Founding.

law." *Baskin v. Bogin*, 766 F.3d 648, 671 (7th Cir. 2014), *cert. denied*, 83 U.S.L.W. 3127 (U.S. Oct. 6, 2014) (No. 14-277).

Consistent with these first principles, the Supreme Court has repeatedly recognized that constitutional guarantees that protect the individual from abuse by the government cannot be left to the democratic process. Under our constitutional scheme, "[o]ne's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). Indeed, if majority approval were enough to make state-sponsored discrimination constitutional, the Fourteenth Amendment would be a dead letter.

No one doubts, as the district court recognized, that federalism is a "vibrant and essential component of our nation's constitutional structure." Op. at 31. Indeed, federalism "is more than an exercise in setting the boundary between different institutions of government for their own integrity. State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the

diffusion of sovereign power." *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011) (internal citations and quotation marks omitted).

But where constitutional limits apply, state prerogatives necessarily end. As a long line of Supreme Court cases make clear, even when states act in an indisputably state sphere, they cannot use the democratic process to write inequality into law or deny to minorities core aspects of liberty. *See Windsor*, 133 S. Ct. at 2691 ("[s]tate laws defining and regulating marriage, of course, must respect the constitutional rights of persons"); *Shaw v. Reno*, 509 U.S. 630 (1993) (same regarding legislative redistricting); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (same regarding land use regulations); *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869 (1985) (same regarding taxation); *Kirchberg v. Feenstra*, 450 U.S. 455 (1981) (same regarding marital property rights); *Orr v. Orr*, 440 U.S. 268 (1979) (same regarding divorce law); *Zablocki v. Redhail*, 434 U.S. 374 (1978) (same regarding marriage again); *Reed v. Reed*, 404 U.S. 71 (1971) (same regarding estates law); *Levy v. Louisiana*, 391 U.S. 68 (1968) (same regarding family law); *Loving v. Virginia*, 388 U.S. 1 (1967) (same

regarding marriage yet again); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (same regarding education).

There is no "marriage exception" to the Fourteenth Amendment's guarantee of equality under the law. On the contrary, the right to marry is "one of the vital personal rights essential to the orderly pursuit of happiness," *Loving*, 388 U.S. at 12, and is "sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996).

Rather than apply these well-established constitutional precepts, the district court deferred to the outcome of the "democratic process," suggesting that any other result would be to "'read personal preference[s] into the Constitution.'" Op. at 13, 29 (quoting *Furman v. Georgia*, 408 U.S. 238, 431 (1972) (Powell, J., dissenting)). But equal rights under law is not a policy preference; it is a constitutional mandate. By deferring to the "democratic process" and empowering the people of Louisiana to impose a class-based badge of inferiority on loving, committed same-sex couples and their children, the district court misapprehended the Fourteenth Amendment's guarantee of equal protection—which protects all persons from state-sponsored

discrimination, including the plaintiffs in this case and all gay men and lesbians who wish to exercise their right to marry—and disregarded vital principles of constitutional supremacy.

ARGUMENT

I. THE TEXT AND HISTORY OF THE EQUAL PROTECTION CLAUSE GUARANTEE EQUALITY UNDER THE LAW AND LIMIT THE POWER OF MAJORITIES IN THE STATES TO DENY EQUAL RIGHTS TO MINORITIES.

While the Supremacy Clause declared the Constitution the "supreme Law of the Land," superior in force to "any Thing in the Constitution or Laws of any State to the Contrary," U.S. Const. art. VI, cl. 2, the original Constitution only contained a handful of explicit limitations on the power of state governments. The compromises necessary to maintain the union proved insufficient to secure our Constitution's promise of liberty and equality. Nearly 70 years later, "[t]he constitutional Amendments adopted in the aftermath of the Civil War fundamentally altered our country's federal system," *McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010), adding to the Constitution sweeping new limits on state governments designed to secure "the civil rights and privileges of all citizens in all parts of the republic," *see*

Report of the Joint Committee on Reconstruction xxi, 39th Cong. (1866), and "keep whatever sovereignty [a State] may have in harmony with a republican form of government and the Constitution of the country." Cong. Globe, 39th Cong., 1st Sess. 1088 (1866). For the first time in history, the Constitution guaranteed the equal protection of the laws to all persons, forbidding legislative or popular majorities in the states from discriminating against disfavored minorities. With the ratification of the Fourteenth Amendment, equal rights under *state* law were constitutionally guaranteed and not subject to a popular vote.

The district court here lost sight of these foundational equal protection principles, instead empowering the people of Louisiana to "disparage and to injure" loving, committed same-sex couples, "whose moral and sexual choices the Constitution protects." *Windsor*, 133 S. Ct. at 2696, 2694. That is a majoritarian bridge too far. While the people of a state may, of course, create laws in the mine run of cases—whether through legislation or ballot measures—they cannot contravene the Fourteenth Amendment's guarantee of equality of rights under the law.

The plain text of the Fourteenth Amendment prohibiting a state from denying to "any person" the "equal protection of the laws"

establishes a broad guarantee of equality for all persons. It secures the same rights and same protection under the law for all men and women, of any race, whether young or old, citizen or alien, gay or straight. *See Yick Wo. v. Hopkins*, 118 U.S. 356, 369 (1886) ("These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality . . . ."); *Civil Rights Cases*, 109 U.S. 3, 24 (1883) ("The Fourteenth Amendment extends its protection to races and classes, and prohibits any State legislation which has the effect of denying to any race or class, or to any individual, the equal protection of the laws."). As history shows, the original meaning of the equal protection guarantee "establishes equality before the law," Cong. Globe, 39th Cong., 1st Sess. 2766 (1866), and "abolishes all class legislation in the States," *id.*, thereby "securing an equality of rights to all citizens of the United States, and of all persons within their jurisdiction." *Id.* at 2502. No person, under the Fourteenth Amendment's text, may be consigned to the status of a pariah, "a stranger to [the State's] laws." *Romer v. Evans*, 517 U.S. 620, 635 (1996). Under the Equal Protection Clause, states may not deny to gay men or lesbians rights basic to "ordinary

civic life in a free society," *id.* at 631, "to make them unequal to everyone else." *Id.* at 635. Quite plainly, the Equal Protection Clause protects minorities from state-sponsored discrimination at the hands of majorities, "withdraw[ing] from Government the power to degrade or demean," *Windsor*, 133 S. Ct. at 2695, through the democratic process.

To justify its contrary conclusion, the district court posited that the Fourteenth Amendment was primarily a prohibition on racial discrimination, not a guarantee of equality that covers everyone. *See* Op. at 14 ("[T]he Fourteenth Amendment expressly condemns racial discrimination as a constitutional evil . . . ."). As the plain language of the text makes clear, however, that is not true. When the 39th Congress designed the Fourteenth Amendment, it chose broad, universal language specifically intended to secure equal rights for *all*. While the Amendment was written and ratified in the aftermath of the Civil War and the end of slavery, it protects all persons. "[S]ection 1 pointedly spoke not of race but of more general liberty and equality." Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 260-61 n.* (1998). Indeed, the Reconstruction-Era Framers specifically considered and rejected proposed constitutional language that would

have outlawed racial discrimination and nothing else. *See* Benjamin B. Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction* 46, 50, 83 (1914), preferring a universal guarantee of equality that secured equal rights to all persons. Whether the proposals were broad in scope or were narrowly drafted to prohibit racial discrimination in civil rights, the Framers of the Fourteenth Amendment consistently rejected limiting the Amendment's equality guarantee to racial discrimination. *See J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 151 (1994) (Kennedy, J., concurring) ("Though in some initial drafts the Fourteenth Amendment was written to prohibit discrimination against 'persons because of race, color or previous condition of servitude,' the Amendment submitted for consideration and later ratified contained more comprehensive terms . . . ."). The Fourteenth Amendment's "neutral phrasing," "extending its guarantee to 'any person,'" *id.* at 152 (Kennedy, J., concurring), was intended to secure equal rights for all.

The Fourteenth Amendment's Framers crafted this broad guarantee to bring the Constitution back into line with fundamental principles of American equality as set forth in the Declaration of

Independence, which had been betrayed and stunted by the institution of slavery. *See McDonald*, 561 U.S. at 807 (Thomas, J., concurring) ("[S]lavery, and the measures designed to protect it, were irreconcilable with the principles of equality . . . and inalienable rights proclaimed by the Declaration of Independence and embedded in our constitutional structure."). After nearly a century in which the Constitution sanctioned racial slavery and allowed all manner of state-sponsored discrimination, the Fourteenth Amendment codified our founding promise of equality through the text of the Equal Protection Clause.

The Framers of the Fourteenth Amendment acted from experience as well. They had seen firsthand that states could not be trusted to respect fundamental liberties or basic notions of equality under the law for all persons. *See Report of the Joint Committee on Reconstruction*, *supra*, at xvii (detailing findings that, in the aftermath of the war, Southern people refused "to place the colored race . . . upon terms even of civil equality" or "tolerat[e] . . . any class of people friendly to the Union, be they white or black"); *see also McDonald*, 561 U.S. at 779 (discussing the "plight of whites in the South who opposed the Black Codes"). This experience confirmed what James Madison had so

elegantly described in Federalist 10: rule by factions in the states was incompatible with constitutional protections of liberty and equality for all. *See The Federalist No. 10*, at 48 (James Madison) (Clinton Rossiter ed., 1961) ("When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens."). In order to prevent these sorts of past abuses, and new ones arising after the Civil War, the Fourteenth Amendment "put in the fundamental law the declaration that all citizens were entitled to equal rights in this Republic," Chi. Trib., Aug. 2, 1866, p.2, placing all "throughout the land upon the same footing of equality before the law, in order to prevent unequal legislation." Cincinnati Com., Aug. 20, 1866, p.2; *see* Charles Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?*, 2 Stan. L. Rev. 5, 72-75 (1949) (discussing press coverage of Fourteenth Amendment).

In short, in a manifest departure from antebellum conceptions of federalism, the Fourteenth Amendment established equality under the law and equality of rights for all persons as a constitutional mandate, forbidding the people of a state from using the democratic process to

subject minorities to adverse, discriminatory treatment and take away their fundamental rights. The district court's contrary conclusion is sharply at odds with the Fourteenth Amendment's text and history. Under the Amendment's plain text and original meaning, this sweeping, universal guarantee applies to the plaintiffs in this case and to all people who wish to exercise the right to marry the person of their choice. The Equal Protection Clause guarantees equality under the law and equality of rights to all persons, including the right to marry, a right recognized by the Framers as part of the "attributes of a freeman according to the universal understanding of the American people[.]" Cong. Globe, 39th Cong., 1st Sess. 504 (1866); *see also id.* at 343 (explaining that the "poor man, whose wife may be dressed in a cheap calico, is as much entitled to have her protected by equal law as is the rich man to have his jeweled bride protected by the laws of the land").

II. THE SUPREME COURT HAS CONSISTENTLY HELD THAT FUNDAMENTAL CONSTITUTIONAL PROTECTIONS ARE NOT SUBJECT TO A VOTE.

Consistent with the Constitution's text and history, the Supreme Court has repeatedly rejected the notion that the people of the states may use the democratic process to make an end-run around the

Constitution's individual-rights guarantees. Under our constitutional scheme, "[o]ne's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Barnette*, 319 U.S. at 638. The Fourteenth Amendment guarantees of personal, individual rights limit the states, whether state action is in the form of a legislative act or a constitutional amendment adopted by the voters of a state. As the Supremacy Clause makes clear, the Constitution is supreme over state law in all its forms. That Louisiana acted through the democratic process here, therefore, does not justify applying a watered-down version of the equal protection guarantee.

The Supreme Court has recognized this principle many times. In 1964, in *Lucas v. Forty-Fourth General Assembly*, the Court easily dispatched the argument that a reapportionment plan that violated the constitutional principle of one person-one vote contained in the Equal Protection Clause could be upheld because it was approved by the voters. 377 U.S. 713 (1964). Explaining that "[a] citizen's constitutional rights can hardly be infringed simply because a majority

of the people choose that it be," *id.* at 736-37, the Court held that the fact that the reapportionment plan was adopted by the voters rather than enacted by the legislature was "without federal constitutional significance." *Id.* at 737. In 1996, in *Romer v. Evans*, the Court struck down a state constitutional amendment adopted by the voters of Colorado as a violation of the equal protection guarantee, concluding that the voter-approved constitutional amendment denied gay men and lesbians rights basic to "ordinary civic life in a free society" in order "to make them unequal to everyone else." 517 U.S. at 631, 635. This, Justice Kennedy explained, "Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws." *Id.* at 635.

More recently, in 2011, in *Arizona Free Enterprise's Freedom Club PAC v. Bennett*, the Supreme Court struck down an Arizona campaign finance statute adopted by the voters, concluding that the measure unduly burdened political speech without sufficient justification. 131 S. Ct. 2806 (2011). As Chief Justice Roberts explained, "the whole point of the First Amendment is to protect speakers against unjustified government restrictions on speech, even when those restrictions reflect

the will of the majority." *Id.* at 2828. As these cases make clear, there is no "will of the majority" exception to the Constitution.

Without even mentioning this long line of cases, the district court read the Supreme Court's recent decision in *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623 (2014), to stand for the proposition that a majority of the people of Louisiana could use the democratic process to single out same-sex couples for adverse treatment and deny them the right to marry. Op. at 30 n.20. This is an unsupportable reading of *Schuette*, divorced from its context and inconsistent with its reasoning.

In *Schuette*, the Court held that the Fourteenth Amendment did not forbid the people of Michigan from amending their state constitution to ban the use of race in admissions in the state's public universities. Concluding that no fundamental right or invidious discrimination was involved, the majority held that the state's voters could properly amend their state constitution "as a basic exercise of their democratic power," rejecting the dissent's argument that the matter had to be left to the university's governing board. *Id.* at 1636

(plurality opinion of Kennedy, J.); *id.* at 1646-47 (Scalia, J., concurring); *id.* at 1649-51 (Breyer, J., concurring).

Schuette is perfectly consistent with the first principles of constitutional supremacy and judicial review affirmed in *Lucas*, *Romer*, and *Arizona Free Enterprise*. Could the people of a state vote to segregate its public schools on the basis of race or deny the right to marry to mixed-race couples? Plainly not. As Justice Kennedy wrote in *Schuette*, "when hurt or injury is inflicted on racial minorities by the encouragement or commands of laws or other state action, the Constitution requires redress by the courts." *Id.* at 1637. That same principle applies equally where, as here, a state denies the right to marry to loving, committed same-sex couples, demeaning their loving relationships, stigmatizing their children, and denying them the full range of benefits that states provide to married couples to ensure family integrity and security.

As Justice Kennedy's opinion in *Windsor* makes clear, the constitutional guarantee of equal protection "withdraws from Government the power to degrade or demean," preventing states from acting to "disparage and to injure" gay and lesbians couples, deny their

equal dignity, and treat their loving relationships as "less respected than others." *Windsor*, 133 S. Ct. at 2695, 2696.

Under the Fourteenth Amendment, the majority cannot treat the members of a minority group as disfavored persons. The Fourteenth Amendment guarantees to all people—regardless of race, sexual orientation, or other group characteristics—equality of rights, including the fundamental right to marry. These protections are the "supreme Law of the Land," overriding laws enacted through the democratic process, whether adopted by state legislatures or by the voters. For that reason, it is irrelevant that popular or legislative majorities may wish to consign same-sex couples to a second-class status.

Under any standard of review, no constitutionally acceptable rationale justifies a state's denial to gay men and lesbians the equal right to marry whomever they choose. As in *Windsor*, "no legitimate purpose overcomes the purpose and effect to disparage and to injure" same-sex couples in committed, loving relationships "whose moral and sexual choices the Constitution protects." 133 S. Ct. 2696, 2694. Far from furthering any state goals connected to marriage, Louisiana's law disserves them, "humiliat[ing] . . . thousands of children now being

raised by same sex couples" and "mak[ing] it even more difficult for the children to understand the integrity and closeness of their own family." *Id.* at 2694; *See also Kitchen v. Herbert*, 755 F.3d 1193, 1219-27 (10th Cir. 2014), *cert denied*, 83 U.S.L.W. 3102 (U.S. Oct. 6, 2014) (No. 14-124); *Bostic v. Schaefer*, 760 F.3d 352, 380-84 (4th Cir. 2014), *cert. denied*, 83 U.S.L.W. 3102, 3120 (U.S. Oct. 6, 2014) (Nos. 14-153, 14-225, 14-251); *Baskin*, 766 F.3d at 656, 659-66; *Latta*, 2014 WL 4977682 at *5-9.

CONCLUSION

There is no exception to the Fourteenth Amendment's commands for cases in which inequality reflects the will of the majority. The district court erred in creating one, and its judgment should be reversed.

Respectfully submitted,

Elizabeth B. Wydra*
Douglas T. Kendall
Judith E. Schaeffer
David H. Gans
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th St., NW, Ste. 501
Washington, DC 20036
(202) 296-6889
elizabeth@theusconstitution.org
**Counsel of Record*

Ilya Shapiro
CATO INSTITUTE
1000 Massachusetts Ave., NW
Washington, DC 20001
(202) 842-0200

Dated: October 24, 2014

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 3,875 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that the attached brief *amici curiae* complies with the typeface requirements of Fed. R. App. P. 32(a)(5)and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Century Schoolbook font.

Executed this 24th day of October, 2014.

/s/ Elizabeth B. Wydra
Elizabeth B. Wydra

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on October 24, 2014.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 24th day of October, 2014.

/s/ Elizabeth B. Wydra___
Elizabeth B. Wydra

Counsel for Amici Curiae